

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

WP(C).No. 18035 of 2006(V)

AGAINST THE ORDER IN IA.2710/05 IN
OS.158/1998 of MUNSIFF COURT, TIRUR
.....

PETITIONER:

HUSSAIN, S/O.NANAPARAMBIL KUNHIMUHAMMED,
VALAVANOOR AMSOM, CHERAVANNUR DESOM,
TIRUR TALUK.

BY ADV. SRI.A.A.ABUL HASSAN

RESPONDENTS:

1. AYISUMMU, W/O.THE LATE NHARAKKAT
MOIDEENKUTTY, VALAVANOOR AMSOM,
CHERAVANNUR DESOM, TIRUR TALUK.
2. KUNHIMUHAMMED, S/O.LATE NHARAKKAT
MOIDEENKUTTY, DO. DO.
3. NAFEESA, D/O.THE LATE NHARAKKAT
MOIDEENKUTTY, DO. DO.
4. MUSTHAFA (MINOR), AGED 8 YEARS,
REPRESENTED BY MOTHER AND GUARDIAN AYISUMMU,
DO. DO.
5. PUTHUTHODI THITHU, W/O.NANAPARAMBIL
KUNHIMUHAMMED, VALAVANOOR AMSOM,
CHERAVANNUR DESOM, TIRUR TALUK.
6. KATHIYAMU, D/O.LATE NANAPARAMBIL
KUNHIMUHAMMED, DO. DO.
7. AYISUMMU, D/O.LATE NANAPARAMBIL
KUNHIMUHAMMED, DO. DO.

8. ABDURAHIMAN, S/O.LATE NANAPARAMBIL
KUNHIMUHAMMED, DO. DO.

9. NABEESU, D/O.LATE NANAPARAMBIL
KUNHIMUHAMMED, DO. DO.

R5 TO R9 BY ADV. SMT.MINI.V.A.
R1 TO R4 BY SRI.T.KRISHNAN UNNI
SRIC.M.MOHAMMED IQUABAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14/12/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX:

EXT.P1: COPY OF AFFIDAVIT IN IA 2710/05 IN OS 158/98 FILED BEFORE
HONOURABLE MUNSIFF COURT, TIRUR

EXT.P2: COPY OF ORDER DT.16.3.06 IN IA 2710/05 IN OS 158/98 OF MUNSIFF
COURT, TIRUR

//True copy//

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO. 18035 OF 2006

Dated 14th December 2006

JUDGMENT

Petitioner is fifth defendant in O.S.158/1998 on the file of Munsiff court, Tirur. Respondents are plaintiffs and other defendants. Petitioner is challenging Ext.P2 order passed by Munsiff dismissing I.A.2710/2005, an application filed under Order XXVI Rule 10 of the Code of Civil Procedure to remit the report submitted by the commissioner. This petition is filed under Article 227 of Constitution of India challenging Ext.P2 order contending that learned Munsiff should have remitted the report back to the commissioner.

2. Learned counsel appearing for petitioner and respondents were heard.

3. Only question for consideration is whether in exercise of the extra ordinary jurisdiction of this court under Article 227 of Constitution of India, interference is called for in Ext.P2 order. Ext.P2 order is an interlocutory order passed in an

application filed to remit the report back to the Commissioner. Learned Munsiff appreciated the facts and found that it is not necessary to remit the report back to the commissioner. The order being interlocutory in nature will not prevent the court below from taking another view at a subsequent stage of the suit. Petitioner is entitled to examine the commissioner and if at the time of subsequent recording of evidence learned Munsiff finds that a further report is necessary, Ext.P2 order will not prevent the learned Munsiff from exercising the power and getting a further report from the commissioner.

Writ petition is disposed of.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.